

Rule 18, Ariz. R. Crim. Proc.

JURY TRIAL: All defendants charged with felony crimes in Arizona are ordinarily entitled to jury trials.....Revised 3/2010

All defendants charged with felony offenses in Arizona are ordinarily entitled to jury trials. Every felony in Arizona ordinarily carries a possible sentence of at least one year of prison. See A.R.S. § 13-702; *but see* A.R.S. § 13-901.01 (stating that defendants convicted of certain drug and paraphernalia offenses must receive probation); *State ex rel. Romley v. Martin*, 205 Ariz. 279, 281, ¶ 7, 69 P.3d 1000, 1002 (2003) (defendants convicted of crimes carrying mandatory probation under A.R.S. § 13-901.01 could not be impeached with those convictions under Rule 609(a)(1), Ariz. R. Evid., because those crimes were not “punishable by death or imprisonment in excess of one year”). *See also Benitez v. Dunevant*, 198 Ariz. 90, 93, ¶ 6, 7 P.3d 99, 102 (2000) (Jury right does not attach to a felony “merely because the legislature has classified it as such, but rather, because, applying our own test, the right attaches to an offense that is sufficiently serious or would have been protected at common law. ... Rather, we look to the consequences of a conviction including the penalties and their impact, as well as the public condemnation of the act, to determine whether any given offense warrants a constitutionally protected jury right”).

In *Baldwin v. New York*, 399 U.S. 66, 69 (1970), the United States Supreme Court stated, “[N]o offense can be deemed ‘petty’ for purposes of the right to trial by jury where imprisonment for more than six months is authorized.” The *Baldwin* Court held that any offense punishable by more than six months of

incarceration is jury-eligible in federal court. In *Duncan v. State of Louisiana*, 391 U.S. 145, 149-150 (1968), the United States Supreme Court held, “[T]he Fourteenth Amendment guarantees a right of jury trial in all criminal cases which – were they to be tried in a federal court – would come within the Sixth Amendment’s guarantee.” Because all felony offenses in Arizona would carry the right to a jury trial in federal court, all defendants charged with felony offenses in Arizona are entitled to jury trials.

In addition, Article 2, § 23 of the Arizona Constitution states, “[T]he right of trial by jury shall remain inviolate.” This section has been interpreted to mean that any defendant who would have been entitled to a jury trial in Arizona before statehood is entitled to a jury trial today. See *Derendal v. Griffith*, 209 Ariz. 416, 419, 104 P.3d 147, 150 (2005). At common law, before Arizona became a state, all felony-level offenses were “serious offenses” punishable by a year or more of incarceration and were jury-eligible. Therefore, every offense classified as a felony in Arizona still requires a jury trial.

The right to jury trial for every felony-level offense persists even though the penalty for the offense may have changed, as in the case of first-offense felony drug possession cases for which probation is mandatory under A.R.S. § 13-901.01. See generally *State ex rel. Dean v. Dolny*, 161 Ariz. 297, 778 P.2d 1193 (1989), *overruled in part by Derendal*, 209 Ariz. 416, 104 P.3d 147.

The right to a jury trial does not attach, however, when a prosecutor exercises the discretion granted under A.R.S. § 13-604 to charge a class 6 felony

offense as a class 1 misdemeanor rather than as a felony, or when the charge is originally filed as a felony but the prosecutor exercises discretion to amend the charge to a misdemeanor. *Amancio v. Forster*, 196 Ariz. 95, 993 P.3d 1059 (App. 1999); *State v. Quintana*, 195 Ariz. 325, 987 P.2d 811 (App. 1999).